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EXAMINER				
CAMPBELL, VICTORIA P				
ART UNIT		PAPER NUMBER		
3763				
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09/03/2010		ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/598,464

Applicant(s)

BONNEY ET AL.

Examiner

VICTORIA P. CAMPBELL

Art Unit

3763

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 6/1/10.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-36, 42-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-36, 42-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SI/22)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date 6/1/10

DETAILED ACTION

This is the third Office Action based on the 10/598464 application filed August 31, 2006. Claims 1-36 and 42-47 as presented November 3, 2009 are currently pending and considered below.

Double Patenting

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to

be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-36 and 42-47 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3-5, 11, 13, 18, 23, 25-30, 32, 58, and 67-70 of copending Application No. 11/911060. Although the conflicting claims are not identical, they are not patentably distinct from each other because the limitations of the presently presented claims are present in or obvious over the limitations of the co-pending application.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 1, 3, 6, 11, 13, 15-36, and 42-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Davies (WO 03095007).

5. Regarding claim 1, Davies discloses a fluid dispensing device for dispensing a fluid product (device of Figs. 1 and 3, further drawn to the embodiment of Fig. 2a) having: a dispensing outlet (15) from which the fluid product is dispensable, a supply of the fluid product (8), a dispensing member (combination of 30, 31, and 34) mounted for movement in a dispensing direction along an axis from a first position to a second position which causes a dose of the fluid product in the supply to be dispensed from the dispensing outlet (Figs. 1 and 3), and a finger-operable actuator member (20 and 21, along with 24 and 25) mounted for movement in an actuating direction which is generally transverse to the axis (Figs. 1 and 3), wherein the actuator member has at least one cam surface (28, Fig. 2a) and the dispensing member has at least one cam follower surface 38 (Fig. 2a), wherein the actuator member is movable in the actuating direction to cause the at least one cam surface to bear against the at least one cam follower surface to force the at least one cam follower surface to ride on the cam surface to cam the dispensing member in the dispensing direction from the first position to the second position (See Figs. 1 and 3 for actuation, and Fig. 2a for the structural embodiment), wherein the at least one cam surface has a commitment section, oriented at a first angle to the axis (28, Fig. 2a) and an adjacent drive section (transition of 28 into 23, see Fig. 2a), which is oriented at a second angle to the axis which is greater than the first angle (the angle between 28 and vertical on the side closest to the bottom is smaller than the angle between 23 and vertical on the side closest to the bottom), wherein the device is configured and arranged such that, in use, the at least one cam follower surface successively rides over the commitment and drive sections of the at

least one cam surface, on movement of the actuator member in the actuating direction, to cam the dispensing member from the first position to the second position (Figs. 1, 2a, and 3; Figs. 1 and 2a show the first position, Fig. 3 shows the second position), and wherein the first angle is selected such that a minimum actuating force is required to be applied to the actuator member to cause the at least one cam follower surface to ride over the commitment section onto the drive section (force required to move the curved part of surface 38 in Fig. 2a past the concave part of surface 28; see Figs. 1-3).

6. Regarding claims 3, 6, 11, 13, and 15-29, Davies discloses that the commitment section is planar (Fig. 2a), that the drive section has an arcuate transition portion contiguous with the commitment section (corner between 28 and 23, Fig. 2a), that the commitment section is of a first length and the drive section is of a second length greater than the first length (Fig. 2a), and that the actuator member is mounted in the device for movement on an arcuate path in the actuating direction (it is mounted about a pivot point, which would create arcuate movement from the location in Fig. 1 to the location in Fig. 3). Further, Davies discloses that the at least one cam follower surface is arcuate (Fig. 2a, transition from 38 to vertical side wall), that the first angle becomes steeper as the actuator member moves in the actuating direction (Figs. 2a-3), and that the second angle to the axis remains substantially constant as the actuator member moves in the actuating direction (Figs. 2a-3). Additionally, Davies discloses that the actuator member is mounted for pivotal movement about a first end thereof (point at which the housing bends, see Fig. 3) and the at least one cam surface is disposed on the actuator member remote from the first end (it is placed away from the first end, Fig.

3), that the dispensing member is a dispensing container containing the supply of fluid product (8, Fig. 1), and that the dispensing direction is an upward direction (Figs. 1 and 3) and the first end of the actuator is at a lower end (Fig. 3; interpreted as the lower end of the housing, which begins at the bending point seen in Fig. 3) and that the at least one cam follower surface is disposed toward the upper end of the dispensing member. Davies also discloses that the dispensing container has a pump to pump the dose of fluid (34). Further, Davies discloses that the actuator member is the sole actuator member (20, 21, 24, and 25 in combination are the only actuator member for the system), that the dispensing outlet is a nozzle shaped and sized for insertion into the nostril of a human or animal body and that the fluid product is medicament (Page 1, paragraph 1). Additionally, Davies discloses the dispensing member and housing have cooperating guide members (31, 16) wherein the guide members prevent rotation about the axis (via friction), and that one of the guide members comprises a runner (31) and the other comprises a track for the runner (16).

7. Regarding claim 30, Davies discloses a fluid dispensing device for dispensing a fluid product (Fig. 1) having: a dispensing outlet (15) from which the product is dispensable, a supply of the fluid product (8), a dispensing member mounted for movement in a dispensing direction along an axis which causes a dose of the fluid product in the supply to be dispensed from the dispensing outlet (30, 31, 34), and a finger-operable actuator member mounted for movement in an actuating direction which is generally transverse to the axis (20, 21, 24, 25; Fig. 3), wherein the actuator member has at least one cam surface (28) and at least one cam follower surface (30), wherein

the actuator member is movable in the actuating direction to cause the at least one cam surface to bear against the at least one cam follower surface to cam the dispensing member in the dispensing direction to cause the fluid product dose to be dispensed from the dispensing outlet (Figs. 1-3), and wherein the actuator member further has a stop to stop the dispensing member being movable along the axis in a direction opposite the dispensing direction beyond a predetermined axial position to provide alignment of the at least one cam surface and the at least one cam follower surface (left corner of portion 25, Fig. 2a).

8. Regarding claims 31-36, Davies discloses that the stop comprises at least one stop surface engageable with a respective surface of the dispensing member (Fig. 2a), that the at least one stop surface extends generally transverse to the axis (Fig. 2a), that the at least one stop surface forms a continuation of the at least one cam surface (Fig. 2a), and that the at least one surface of the dispensing member forms a continuation of the at least one cam follower surface (Fig. 2a). Davies further discloses that the at least one cam surface is presented by a nose section of the actuator member (25) and that the stop comprises at least one stop surface engageable with a respective surface of the dispensing member and the at least one stop surface is presented by a tip portion of the nose section (Fig. 2a, the stop as defined above is a tip portion of 25).

9. Regarding claim 42, Davies discloses a fluid dispenser (Fig. 1) adapted for dispensing a fluid product into the nasal cavity of a user (Page 1, Paragraph 1) having a nozzle (31) sized and shaped for insertion in to the nostril of the user and a housing (6) in which the fluid product (8) is containable, wherein the housing has an opening (16) in

which the nozzle is received and a fastening mechanism which fastens the nozzle in the opening (24, 25).

10. Regarding claims 43-47, Davies further discloses that the housing houses a dispensing container (30) which contains the fluid product and has a dispensing member (30, 31, 34) wherein the nozzle has an outlet passageway (not shown, channel through nozzle 31; continuing to channel 17) through which, in use, fluid product is dispensed from the dispenser, and wherein the container is positioned in the housing so that the dispensing member and the outlet passageway are in direct fluid communication (Fig. 1), that the dispensing member is engaged with the outlet passageway (Fig. 1), that the fastening mechanism has a clamp member (24, 25) which clamps the nozzle in the opening, that the nozzle has a flange (outer edge) abutting an inner surface of the housing (16) and the fastening mechanism fastens the flange to the inner surface to retain the nozzle in the opening (Fig. 1), and that the clamp member is a collar structure (curved surface 28 and the adjacent portion which abuts surface 38) provided on the inner surface of the housing (Fig. 1), the collar structure being bent or folded over the flange (Fig. 2a, bent over the outer surface) to clam the flange to the inner surface (Fig. 1).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the

invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. Claims 2, 4, 5, 7, 8-10, 12, and 14 are rejected under 35 U.S.C. 103(a) as being unpatentable over Davies.

13. Regarding claims 2, 4, 5, 7, and 12, Davies discloses the claimed invention except for the first angle is in the range of about 20-35 degrees; the minimum actuating force is in the range of about 20-45N; the second angle is in the range of about 40-60 degrees; the transition portion has a radius of curvature of about 1-5mm; or the minimum actuating force is in the range of about 25-40N. However, it would have been obvious to one having ordinary skill in the art at the time the invention was made to determine a particular range of angle, radius of curvature to use for a concave or convex surface, and a desired range of minimum actuating force, since it has been held that where the general conditions of a claim are disclosed in the prior art, **discovering the optimum or workable ranges** involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

14. Regarding claims 8-10 and 14, Davies discloses the apparatus as claimed except for the drive section is arcuate; having a first portion of a first radius of curvature and a second portion having a second radius of curvature greater than the first radius; the drive section consists of said first and second portions; and the second portion has a radius of curvature from 15-40mm. However, at the time of invention, it would have been obvious to one having ordinary skill in the art to make the straight portion 23 of the drive section of Davies arcuate as in the embodiment of Figure 2b of Davies (adjacent portion 27), as doing so is an obvious matter of design choice, since applicant has not

disclosed that curving the drive section solves any stated problem or is for any particular purpose and it appears that the invention would perform equally well with the straight drive section of Davies Fig. 2a. Further regarding the first and second radius of curvature having different values, the examiner notes that Davies teaches a drive section having two separate radii of curvature (the concave portion to the immediate right of labeled portion 27 and then to the transitional convex portion between 27 and 23) and it would have been obvious to have a particular radius of curvature to use for the arcuate surfaces since it has been held that where the general conditions of a claim are disclosed in the prior art, **discovering the optimum or workable ranges** involves only routine skill in the art. *In re Aller*, 105 USPQ 233.

Claim Objections

15. Claims 2, 4, 5, 7, 12, 14, 30, and 35 are objected to because of the following informalities: the claims fail to find proper antecedent basis for the claimed subject matter. See 37 CFR 1.75(d)(1) and MPEP § 608.01(o). Correction of the following is required:

Claim 2: 20-35 degrees.

Claim 4: 20-45N.

Claim 5: 40-60 degrees.

Claim 7: 1-5 mm.

Claim 12: 25-40N.

Claim 14: 15-40 mm.

Claim 30: a stop.

Claim 35: a nose section.

Response to Arguments

16. Applicant's arguments with respect to the above claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to VICTORIA P. CAMPBELL whose telephone number is (571)270-5035. The examiner can normally be reached on Monday-Thursday, 7-5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nicholas Lucchesi can be reached on 571-272-4977. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Victoria P Campbell
Examiner, AU 3763

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